



Republic of the Philippines
SANDIGANBAYAN
Quezon City

SPECIAL SIXTH DIVISION

**PEOPLE OF THE
PHILIPPINES,**

Plaintiff,

SB-15-CRM-0135

For: Violation of Section 3 (e) of
R. A. No. 3019

-versus-

**ISAIAS B. UBANA II,
BERNADETTE EUDELA
NIEVA and LEONARDO V.
REVUELTA,¹**

Accused,

PRESENT:

FERNANDEZ, SJ², *J., Chairperson*
MIRANDA,
MUSNGI³,
FERNANDEZ, B⁴, &
PAHIMNA⁵, *JJ.*

Promulgated

NOV 28 2017 *[Signature]*

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¹ The Resolution dated September 6, 2017 pertains to SB-15-CRM-0135 and 0136. The present incident disposes of SB-15-CRM-0135 only because accused-movant Revuelta is not an accused in SB-15-CRM-0136. The other accused did not file any motion for reconsideration.

² J. Ponferrada, Chairperson of the 6th Division when the present incident was submitted for resolution, retired on September 13, 2017. J. Fernandez, SJ will participate in the resolution of the present incident in view of her assumption as Chairperson of the 6th Division on the same date. (As per Administrative Order (A.O.) No. 314-2017 dated September 13, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).

³ At the time the present incident was submitted for resolution, J. Musngi was designated as a temporary member of the Sixth Division, in view of the vacancy therein (as per A.O. No. 124-2017 dated April 4, 2017; Revised Internal Rules of the Sandiganbayan, Rule XII, Section 3).

⁴ In the resolution of the incident subject of the present motion for reconsideration, J. B. Fernandez was designated as a special member of the Special 6th Division. (as per A. O. No. 8-C-2017 dated August 23, 2017; Revised Internal Rules of the Sandiganbayan, Rule XIII, Section 1).

⁵ In the resolution of the incident subject of the present motion for reconsideration J. Pahimna was designated as a special member of the Special 6th Division. (as per A. O. No. 8-C-2017 dated August 23, 2017; Revised Internal Rules of the Sandiganbayan, Rule XIII, Section 1).

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RESOLUTION

MIRANDA, J.:

This resolves: 1) accused-movant Leonardo V. Revuelta's Motion for Reconsideration dated September 22, 2017; and 2) the Prosecution's Opposition dated September 29, 2017.

In his motion for reconsideration, the accused-movant assails the Resolution dated September 6, 2017 denying his Motion to Dismiss dated January 29, 2017. In particular, he claims that: 1) The procedural delays suffered by this case during the preliminary investigation are inexcusable and violative of his right to the speedy disposition of the case; 2) He is not required to follow up the prosecution of his case with the Office of the Ombudsman; 3) He should not be faulted for filing his motion to dismiss on January 29, 2017 only; 4) The Supreme Court and other divisions of this Court dismissed cases with a delay of at least three (3) years.

In its opposition, the Prosecution, through the Office of the Special Prosecutor (OSP), seeks the denial of the motion for reconsideration filed by the accused-movant on the following grounds: 1) A "balancing test", in which the conduct of the prosecution and defense is weighed, should be followed in determining whether the right of the accused to the speedy disposition of the case was violated; 2) The right to the speedy disposition of the case must be invoked by the accused at the first instance or at the first reasonable opportunity; 3) The prejudice claimed to have been suffered by the accused-movant does not have any factual basis.

After a restudy, the Court finds nothing new in the arguments raised by the accused-movant in his motion for reconsideration. Accordingly, the motion for reconsideration is **denied** for lack of merit.

The Supreme Court has consistently emphasized that the constitutional right to the speedy disposition of cases is a relative and flexible concept.⁶ To reiterate, *each case must be decided upon the facts peculiar to it.*⁷ A mere mathematical reckoning of time involved would not

⁶ *Dela Pea v. Sandiganbayan*, G.R. No. 144542, June 29, 2001

⁷ *Benares v. Lim*, G.R. No. 173421, December 14, 2006.

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be sufficient.⁸ The length of time spent by the Office of the Ombudsman in the conduct of the preliminary investigation is **just one** of the four (4) factors to determine inordinate delay. The reasons for the delay, the assertion or failure to assert such right by the accused, and the prejudice caused by the delay are also considered in ascertaining whether the right of the accused to the speedy disposition of the case has been violated.⁹

In this case, records indicate that the Office of the Ombudsman spent an aggregate period of *six (6) years, three (3) months and fifteen (15) days* from receipt of the anonymous complaint on March 16, 2009, to file the information with this Court on July 1, 2015. However, the Court excluded the period of *(2) years, four (4) months and twenty-eight (28) days* from the total period of preliminary investigation because it was spent by the Municipal Accountant of Lopez, Quezon and Commission on Audit (COA) Local Government Sector-Cluster of Lucena City in complying with the subpoena *duces tecum* issued by the Office of the Deputy Ombudsman for Luzon¹⁰, and by the COA to conduct another fact-finding investigation in relation to the additional documents submitted by the complainants.¹¹ These incidents were excluded as they were beyond the control of the Office of the Ombudsman and the accused. The periods of *six (6) months and twenty-three (23) days* with regard to co-accused Isaias Ubana II (Ubana), and *five (5) months and ten (10) days* with regard to accused-movant and his co-accused Bernadette Nieva (Nieva) are also excluded because they spent these periods in submitting a counter-affidavit, and seeking a reconsideration of the resolution of the Office of the Ombudsman, respectively.

With respect to the accused-movant, the period of fact-finding investigation that started on March 16, 2009 until the inclusion of the accused-movant in the case on September 21, 2011, or *two (2) years, five (5) months and seventeen (17) days*, is also excluded from the computation of the total period of preliminary investigation. Prior to September 21, 2011, accused-movant was never treated as a respondent or accused in the case. The complaint and preliminary investigation were first initiated against accused Ubana only. Accused-movant was only impleaded as one of the respondents after the issuance of the order of his inclusion in the case by the

⁸ *Ibid.*

⁹ See *Corpuz v. Sandiganbayan*, G.R. No. 162214, November 11, 2004.

¹⁰ The Municipal Accountant of Lopez, Quezon and COA LGS-Cluster of Lucena City took *five (5) months and twelve (12) days* to submit relevant documents in compliance with the subpoena *duces tecum* issued by the Office of the Deputy Ombudsman for Luzon.

¹¹ COA took *one (1) year, eleven (11) months and sixteen (16) days* to conduct another fact-finding investigation after submission of an alleged COA audit observation memorandum and fact-finding report by the complainants.

Deputy Ombudsman for Luzon on September 12, 2011. It was only on September 21, 2011 that he was required by the Deputy Ombudsman for Luzon to submit his counter-affidavit. Hence, it cannot be said that accused-movant suffered any undue prejudice or vexatious process before September 21, 2011.

Therefore, the Office of the Ombudsman finished the preliminary investigation, and the OSP filed the information in this case after *three (3) years, three (3) months and twenty-six (26) days* as regards Ubana, and *eleven (11) months and five (5) days only* as regards the accused-movant and Nieva. The Court finds this period not oppressive, arbitrary and vexatious to the accused-movant.

All other matters raised by the accused-movant in his motion for reconsideration and by the Prosecution in its opposition, such as the inexcusable delays by the Office of the Ombudsman in the conduct of the preliminary investigation, the non-waiver by the accused-movant of his constitutional right to the speedy disposition of the case, the prejudice suffered by him because of the alleged delay, and the application of the Supreme Court rulings to this case, were already passed upon and resolved by the Court in the assailed resolution. Again, each case involving an alleged violation of the right of the accused to the speedy disposition of the case is judged on a case to case basis. The Court is required to do **more than a computation** of the number of years that elapsed in the conduct of the preliminary investigation and filing of the information in court. **The inquiry as to whether or not an accused has been denied such right is not susceptible by precise qualification.** Particular regard must be had to peculiar circumstances attendant of each case.

It must be borne in mind that the rights given to the accused by the Constitution and the Rules of Court are shields, not weapons; hence, courts are to give meaning to that intent.¹² There being no new matters or issues raised to warrant a reversal thereof, the Court is not inclined to grant the accused-movant's motion for reconsideration.

¹² *Supra*, 8.

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WHEREFORE, the Motion for Reconsideration dated September 22, 2017 of accused-movant Leonardo V. Revuelta is **DENIED**. The Resolution of the Court promulgated on September 6, 2017 is **AFFIRMED**.

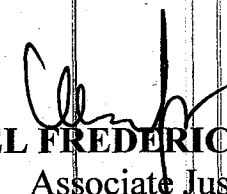
SO ORDERED.

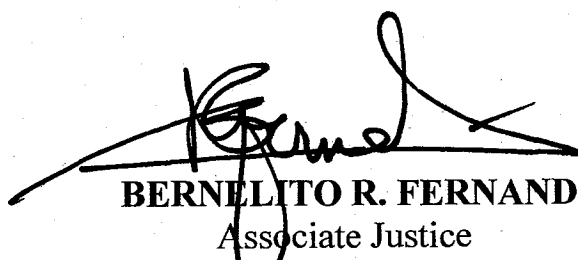

KARL B. MIRANDA
Associate Justice

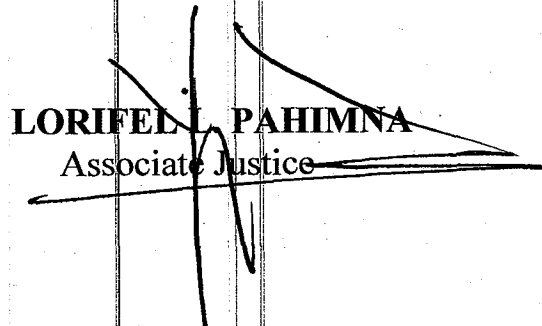
WE CONCUR:

*(dissent
see dissenting opinion)*


SARAH JANE T. FERNANDEZ
Associate Justice
Chairperson


MICHAEL FREDERICK L. MUSNGI
Associate Justice


BERNELITO R. FERNANDEZ
Associate Justice


LORIFELL L. PAHIMNA
Associate Justice

DISSENTING OPINION

MUSNGI, J.:

I dissent from the Resolution denying the *Motion for Reconsideration* dated 22 September 2017 filed by accused Leonardo V. Revuelta, and maintain the position expressed in my Dissenting Opinion to the 06 September 2017 Resolution of the Court.

To reiterate, the prosecution failed to provide a reasonable explanation to justify the attendant delay in the disposition of these cases. It simply put the blame on other government agencies as the cause of this delay. Hence, all circumstances surrounding the delay in the fact-finding and preliminary investigation conducted against the accused remain to be attributable to the Office of the Ombudsman.

It cannot be overemphasized that the prosecution is constitutionally mandated to resolve cases with utmost dispatch, thus:

“Verily, the Office of the Ombudsman was created under the mantle of the Constitution, mandated to be the ‘protector of the people’ and as such, required to ‘act promptly on complaints filed in any form or manner against officers and employees of the Government, or of any subdivision, agency or instrumentality thereof, in order to promote efficient service.’ This great responsibility cannot be simply brushed aside by ineptitude. Precisely, the Office of the Ombudsman has the inherent duty not only to carefully go through the particulars of case but also to resolve the same within the proper length of time. Its dutiful performance should not only be gauged by the quality of the assessment but also by the reasonable promptness of its dispensation.’

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‘Lest it be misunderstood, the right to speedy disposition of cases is not merely hinged towards the objective of spurring dispatch in the administration of justice but also to prevent the oppression of the citizen by holding a criminal prosecution suspended over him for an indefinite time. Akin to the right to speedy trial, its "salutary objective" is to assure that an innocent person may be free from the anxiety and expense of litigation or, if otherwise, of having his guilt determined within the shortest possible time compatible with the presentation and consideration of whatsoever legitimate defense he may interpose. This looming unrest as well as the tactical disadvantages carried by the passage of time should be weighed against the State and in favor of the individual.’¹

Likewise, it should be emphasized that the accused’s assertion of his constitutional right to speedy disposition of cases is not the only factor to consider in determining inordinate delay. Indeed, a balancing test of applying societal interests and the right of the accused necessarily compels the Court to approach speedy disposition cases on an *ad hoc* basis.²

¹ *Coscolluela vs. Sandiganbayan*, G.R. No. 191411, July 15, 2013.

² *Corpus v. Sandiganbayan*, G.R. No. L-37007, 20 July 1987.

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Moreover, in the case of *Coscolluela vs. Sandiganbayan*,³ the Supreme Court, citing *Barker v. Wingo*,⁴ ruled that the respondents in a preliminary investigation are not required to follow up on the prosecution of their case, thus:

“Being the respondents in the preliminary investigation proceedings, it was not the petitioners’ duty to follow up on the prosecution of their case. Conversely, it was the Office of the Ombudsman’s responsibility to expedite the same within the bounds of reasonable timeliness in view of its mandate to promptly act on all complaints lodged before it. As pronounced in the case of *Barker v. Wingo*:

‘A defendant has no duty to bring himself to trial; the State has that duty as well as the duty of insuring that the trial is consistent with due process.’ (citation omitted)

The most serious interest protected by the right to speedy disposition of cases is the limitation on the possibility of impairing the accused’s defense. A pending and prolonged disposition of a case against the accused causes anxiety, hostility, additional expenses, and restriction on his person and well-being. The passage of time in the conduct of the investigations weakens the defense of the accused.

In these cases, inordinate delay has already caused tactical disadvantage in the preparation of the accused’s defense. It cannot be denied that the delay of six (6) years, three (3) months, and eleven (11) days reckoned from the receipt of the anonymous Complaint on 16 March 2009 until the filing of the *Information* before the Court on 01 July 2015 has already extremely prejudiced the accused.

ACCORDINGLY, I vote to **GRANT** the *Motion for Reconsideration* dated 22 September 2017 filed by accused Leonardo V. Revuelta, and reiterate my vote to **GRANT** the *Motion to Dismiss* dated 29 January 2017 filed by accused Revuelta and adopted by accused Isaias B. Ubana II and Bernadette Eudela Nieva in their *Manifestation* dated 14 March 2017.


MICHAEL FREDERICK L. MUSNGI
Associate Justice

³ G.R. No. 191411, July 15, 2013.

⁴ 407 U.S. 514 (1972).